

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD, INC.,  
POLYPROPYLENE HERNIA MESH  
PRODUCTS LIABILITY LITIGATION

Case No. 2:18-md-2846

JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Kimberly A. Jolson

This document relates to:  
*Milanesi et al. v. C.R. Bard, et al.*  
Case No. 2:18-cv-01320

**CASE MANAGEMENT ORDER NO. 29-C**

**Pretrial and Trial Schedule for Second Bellwether Trial Case**

On January 24, 2020, the Court selected *Milanesi et al. v. C.R. Bard et al.*, Case No. 2:18-cv-01320 as the second Bellwether Trial Case that will be tried in this multidistrict litigation (“MDL”). This trial has been rescheduled to Monday, March 21, 2022. This amended CMO supersedes the deadlines in CMO No. 29-A as set forth below.

**I. TRIAL**

1. The second Bellwether Trial Case is scheduled for trial on **Monday, March 21, 2022**, at 9:00 a.m. in Courtroom 2.
2. Unless otherwise notified by the Court, trial counsel shall meet in the chambers of Judge Sargus at 8:30 a.m. on each day of the trial.
  - a. Attached to this CMO is the Court’s Final Pretrial Order (“CMO 29-D”). The parties shall jointly submit CMO 29-D on or before **Monday, March 14, 2022**.

**II. WITNESS LISTS**

Witnesses not included on a party’s witness list shall not be called at trial absent agreement by the parties or a showing of good cause as to why the witness was not included on the witness list. The parties will use good faith efforts to list persons whom they actually

intend to call at trial (live or by deposition) on a “will call” list, and persons whom they currently believe are unlikely to be called but may be called on a “may call” list. The parties shall also use good faith efforts to state whether each proposed witness will be called live, or by deposition.

### **III. EXHIBITS**

The Court strongly encourages the parties to utilize the electronic courtroom technology for presentation of evidence. The parties shall report to the Court, by joint submission, on or before the date of the first final pretrial conference, their intent to use the technology. If the parties are not utilizing the Court’s complete electronic technology, they shall present their exhibits by using the document cameras (ELMOs) located at counsel tables. The parties shall provide copies of the exhibits to the Court as used during trial.

No later than the day trial commences, the parties shall provide one paper courtesy set of the exhibits that they intend to use at trial to the Court. These copies should incorporate the Court’s rulings on objections.

The parties are directed to stipulate to the exhibits for which they have no objections in advance of trial to the furthest extent possible.

#### **A. Exhibits During Trial**

At trial, counsel may not approach a witness to tender an exhibit. Rather, the Courtroom Deputy will place each exhibit before each witness. In formulating a question to a witness, counsel shall clearly specify the exhibit number or designation involved to ensure a clear trial record.

Exhibits introduced for the first time must be displayed to opposing counsel. Counsel shall be prepared to provide copies of such exhibits to opposing counsel, the Court, and the

witness.

The parties shall also provide to the Courtroom Deputy each morning a list of exhibits that the witnesses plan to testify to during that day of trial.

#### **IV. MODIFICATION**

The parties may by agreement modify the dates within this CMO that affect only the parties. All deadlines established for submissions to the Court may only be modified for good cause and with the permission of the Court.

#### **V. ADDITIONAL GUIDELINES**

##### **A. Jury**

Any prospective juror may be challenged for cause. Each party shall be entitled to three (3) peremptory challenges. 28 U.S.C. § 1870. The parties will exercise their peremptory challenges alternately with the plaintiff exercising the first challenge. If either party "passes," that challenge will be counted as used.

In most civil cases the Court will seat a jury of eight (8) members. In accordance with Federal Rule of Civil Procedure 48, all jurors shall participate in the verdict unless excused pursuant to Rule 47(c). Unless the parties otherwise stipulate, the verdict shall be unanimous.

##### **B. Trial Procedure**

Trial will commence every day at 9:00am. The Court will take one mid-morning break, one lunch break, and one mid-afternoon break each day.

##### **C. Disclosure of Live Witnesses**

Unless the parties agree otherwise, given the nature of this trial, including the extraordinary amount of documents and preparation, disclosure of live witnesses to be called to testify, and expected order, shall be made 24 hours in advance of the witness testifying.

Any new witness for a Monday shall be disclosed on Friday before 9:00 p.m. (Eastern Standard Time). The parties shall use good faith efforts to notify opposing counsel of witnesses to be presented by deposition designations 24 hours in advance of their use at trial, but the intent of this is not to preclude a party from utilizing a deposition designation if time allows for such use during the natural progression of the trial.

**D. Other Matters**

This Order supersedes all previous orders in this case to the extent previous orders are inconsistent with this Order.

The parties shall address questions about this Order to the Court's Law Clerk, Ashlee Riner. When calling or emailing, please have counsel for all parties participating or with fewer than all counsel participating with express permission of non-participating counsel.

**IT IS SO ORDERED.**

1/11/2022  
DATE

s/Edmund A. Sargus, Jr.  
**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**